

EXCERPT FROM THE AMICUS CURIAE BRIEF OF CANADA
TO THE SUPREME COURT OF THE UNITED STATES
ON THE ALVAREZ-MACHAIN CASE

In the Alvarez-Machain case Mexican nationals kidnapped Alvarez-Machain, a Mexican, from his office in Guadalajara, Mexico and brought him to the United States to stand trial on charges that he participated in the murder of Enrique Camarena, an agent of the U.S. federal Drug Enforcement Agent. The District Court concluded that the kidnappers acted as agents of the DEA. The U.S. Supreme Court ruled that a defendant may not be prosecuted in violation of an extradition treaty but that the kidnapping did not violate the U.S.-Mexico Extradition Treaty. Neither the Treaty's language nor the history of negotiations and practice under it supported the proposition that it prohibited abductions outside of its terms. The Court said that the Treaty did not provide the only way in which one country might gain custody of a national of the other country for the purpose of prosecution. It therefore found that the kidnapping did not contravene U.S. domestic law (although it may have been a breach of international law).

The Canadian Government filed an amicus curiae brief with the Supreme Court of the United States. The following is an excerpt from that brief:

"The issues presented in this case could have a profound effect on Canada-USA extradition relations. Canada files this brief out of concern for the practice of transborder abductions of fugitives contrary to law. Such abductions contravene fundamental principles of justice that Canada has sought to uphold. They conflict with Canada's sense of the way the return of fugitives with its great neighbour ought to be conducted. Abductions offend against Canada's view of the law in international affairs. Canada is concerned that the United States Government considers it permissible for a law enforcement agency, sworn to uphold the law, to violate a treaty relationship, the sovereignty and laws of a treaty partner and the rights of a fugitive resident of a treaty partner.

Canada has a long tradition of international cooperation through extradition treaties with the United States beginning with the Jay Treaty of November 19, 1794 between Great Britain and the United States. Since 1842, rendition has been governed by a series of agreements of which the extant Treaty of Extradition of December 3, 1971, 27 U.S.T. 985, T.I.A.S. No. 8237 ("Treaty") came into force on March 12, 1976. A Protocol to this Treaty, significantly broadening the types of offenses for which extradition could be granted, came into force on November 26, 1991.

The Treaty, on a reciprocal basis, establishes a comprehensive system for rendition of fugitives, describes the nature of offenses for which extradition may be sought, and guarantees every fugitive access to the courts of the requested nation in order to test the validity of a rendition request.

The Treaty is part of the law of Canada and was negotiated with the